KEVIN JENKINS
NORTHWOODS ASSN. OF REALTORS

Testimony for Senate Natural Resources Committee Hearing
10:00 AM, Room 201 Southeast
7 February 2008

Introduction

- Good morning Chairman Miller, Vice - Chairman Jauch and Committee Members. Thank you for the opportunity to testify before you today on the Senate Bill 169, authored by my Senator, Roger Breske.

- Essentially, this bill mirrors legislation (AB 850) that was passed with wide bi-partisan support two years ago by the Senate and Assembly. The legislation was ultimately vetoed by Governor Doyle. The veto meant that property owners would continue to be uncertain about which piers would be permanently grandfathered. This bill solves that issue, in addition to offering some other changes. Coming from an area that is rich is water resources, you can understand why SB 169 is so important to the members of my organization.

- Although the Assembly and Senate believed that Assembly Bill 850 represented a good balance between protecting private property rights and the public's interest in using our waterways, Governor Doyle did not, and as a result, vetoed the bill. His primary objection to the bill was that he believed it grandfathered existing piers that were too big.
- Before vetoing the bill, the governor issued an executive order directing the DNR to regulate piers according to an earlier version of Assembly Bill 850 that he preferred. Rather than grandfathering all piers with a deck no greater than 300 square feet, the executive order protects only those existing piers with a deck that is either a) no greater than 200 square feet, with no width limitations, or b) between 200 and 300 square feet, but no wider than 10 feet. The governor preferred the 10-foot width limitation on larger decks because large platforms are believed to block the sunlight and adversely impact fish and other aquatic habitats below the platform.
- Key Point – From a practical standpoint, the primary difference between Assembly Bill 850 and Governor Doyle's executive order is that Assembly 850 would have grandfathered the handful of existing piers with decks that were 12 feet by 20 feet, 12 feet by 24 feet, or 16 feet by 16 feet, assuming that most decks are constructed with standard four foot pier sections.
- Although Governor Doyle's executive order appears to provide some relief for waterfront property owners this summer, the legal effect of the executive order is still unclear. As a general rule, a governor's executive order may not be in conflict with a state statute. Because Governor Doyle's executive order appears to conflict with current state statutes in a number of areas, some provisions in the executive order may not have the force and effect of law and, therefore, cannot be enforced. Also, an

executive order is, at best, only temporary in nature, and does not permanently resolve the issue or permanently grandfather any piers.

- Since the 1950's, we have been operating under very ambiguous state statutes that said it o.k. to place a pier without a permit so long as that pier, among other things, did not violate the public interest or the rights of neighboring riparians.

- Big or small, we believe a pier that was lawful when placed should continue to be lawful under new regulations. If a pier did not violate any standards when it was placed, it seems fundamentally unfair to create new standards for piers and apply them retroactively to existing piers and require them to be brought into compliance.

Background

- The Northwoods Association of REALTORS supports the regulation of piers. We need clear standards to provide property owners with certainty as to what size piers are acceptable and what size are not. We need regulations to insure the public's ability to navigate, recreate and otherwise enjoy our waterways is protected. However, these regulations must be reasonable and must recognize the rights of riparian property owners.

- When the State established a 75-foot shoreland setback in 1960s, all homes and structures built prior to this date that were located closer to the water were grandfathered and allowed to remain in place.

- When the State created new regulations for boathouses, existing boathouses were grandfathered.

- We cannot go back now and pretend that these regulations always existed and that property owners knew or should have known that they would be created in 2004. The vast majority of property owners who would be negatively impacted by the retroactive application of the standards are not bad actors. When they originally placed their pier, they believed that they were doing so in compliance with established law.

- And it doesn't seem fair to tell them that the same pier that was legal yesterday and every day for the past several years or decades is now illegal today under new pier regulations.

Conclusion

➢ In conclusion, we hope that the committee votes to advance SB 169 so that property owners with existing piers will have reasonable certainty that their piers will not be declared illegal under future regulations.

WISCONSIN
DEPT. OF NATURAL RESOURCES

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Matthew J. Frank, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TTY Access via relay - 711

February 6, 2008

To: Members, Senate Environment and Natural Resources Committee

From: DNR Secretary Matt Frank

Subject: Senate Bill 169/Assembly Bill 297

Attached is DNR's testimony on 2005 Assembly Bill 850 as amended, dealing with the regulation of piers. Because our comments and support for that compromise language are the same as they were last session, I have attached that past testimony. During negotiations on 2005 AB 850, a compromise had been struck on the regulation of piers which the DNR and Governor Doyle supported. Unfortunately, that compromise language never made it to the Governor's desk for his signature.

Now that the compromise language is again in front of the Legislature as 2007 AB 297 and SB 169, we would like to renew our support.

If you have any further questions, DNR Executive Assistant Mary Ellen Vollbrecht and DNR Deputy Secretary Pat Henderson stand poised to assist you.

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TTY Access via relay - 711

Testimony of Todd Ambs, Water Division Administrator
on Senate Substitute Amendment to AB 850

Senate Natural Resources and Transportation Committee
March 8, 2006

On December 1, 2005, Secretary Hassett testified before the Assembly Natural Resources Committee, in opposition to AB 850. Since then, many individuals and organizations have worked hard with Senator Kedzie and Representative Gunderson, to develop a compromise bill that addresses the Department's concerns, but also responds to legislative and constituent concerns about DNR's proposed pier rules. I thank Senator Kedzie and Representative Gunderson for their leadership in these efforts, and I am pleased to testify today in support of this Senate Substitute Amendment.

Two years ago, when the legislature passed Act 118 and the Governor signed it into law, you established specific exemption standards for piers. Since then the Department has continued to pursue rules and legislation that achieve four goals:

1) Ensure that new piers are of a reasonable size
2) Grandfather all existing piers that meet the reasonable use test and that don't interfere with public rights – the same standard that has existed in Wisconsin for decades.
3) Establish certainty for everyone concerned, through numeric size limits, regarding what the owners of oversized piers must do to achieve compliance.
4) Provide a mechanism to analyze the largest structures to make sure that those structures comply with the law and are not appropriating our public waters for a private purpose.

The Senate Substitute Amendment achieves these goals, and establishes clear legislative intent for the regulation of piers and similar structures in Wisconsin. Here's what we believe the Senate Substitute Amendment does:

Exemption
Piers that don't need a permit can be up to 6-feet wide under current statute. This bill allows an 8-foot wide "T" or "L" platform at the end, to address concerns from manufacturers and dealers of 4-foot wide pier sections. **More than 85% of current pier owners will have to do NOTHING, and the additional flexibility allows new piers to have a reasonable platform for loading and recreational use.**

Grandfathering of Existing Piers

The bill grandfathers most piers that existed before the date of Act 118, but that don't meet the exemption requirements. These pier owners simply register their pier with DNR sometime in the next 3 years, through a one-time free process. They get a document back that they can record at the Register of Deeds if they desire. The registration insures that the pier owner can keep their existing pier at whatever length and number of boat slips it has. Also the pier can be up to 8-feet wide, have a platform up to 200 square feet in size, or up to 300 square feet as long as the platform is no more than 10-feet wide. Why do we care about width? Simple – the wider the platform, the more it inhibits sunlight from reaching aquatic plants, and the more it harms habitat in our lakes and rivers. Limiting platform size and especially width is critical to ensuring that grandfathered piers don't harm public rights.

Existing Piers that need a Permit

Less than 0.5% of all existing piers will have a larger platform and will require a one-time Individual Permit from DNR. These pier owners will have to demonstrate that their pier doesn't harm public rights or the rights of other waterfront owners - the same standards that have been in statute for decades. Under the Senate Substitute Amendment, the owner of an existing pier will not have to pay a fee to go through this Individual Permit process.

Funding

Let me be very clear – it will cost the Department about $400,000 to implement this legislation. Education and outreach to property owners who want to understand what's in the new law, responding to requests for Exemption Determinations from property owners, processing free grandfathering Registrations, processing Individual Permits for the piers with larger platforms – these all require significant staff time and financial resources, with no revenue to offset the costs. We can support the bill before you today because it appropriates the money we need for implementation. Without either permit fees or an appropriation to cover our $400,000 costs, we'll be forced to shift resources from other waterway permit work, increasing turnaround times for other regulated activities and undoing much of the streamlining we all worked so hard to achieve with Act 118.

New Piers

The Senate Substitute Amendment addresses concerns that many had regarding how DNR's proposed rules limited options for new piers to go beyond exemption standards. This bill allows anyone to apply for an individual permit for a new pier, including solid piers or proposals for additional boat slips. It also allows more boat slips for new multifamily residential or commercial development on larger lakes that are not specially-designated waters, but requires a permit process to ensure that public and neighboring rights are protected.

Carefully Crafted Compromise

Like most controversial issues, this Senate Substitute Amendment to AB 850 represents a carefully crafted compromise that either strikes a reasonable balance or has a little something in it to irritate everybody, depending on your perspective.

We are a bit uncomfortable with allowing ten foot wide, 300 square foot decks to stay on our public waters, but we can live with it.

We have some heartburn with allowing double density for boat slips solely because a property has more dwelling units on the same amount of shoreline, but we can live with it.

And we would have preferred to have more certainty when reviewing applications for solid piers on the Great Lakes or for individual permits for multi-unit dwellings, but we can live with it.

We can live with these things because this legislation as drafted does set clear limits on new piers and provides a mechanism for reviewing existing large party platforms so that we can make sure that no one is appropriating the public waters of this state for their own private use.

I mention these things because there may be attempts by other interests to amend or alter this legislation. Frankly, we would like a few amendments of our own. But we would suggest at this stage that any substantive changes to this carefully crafted compromise would very likely change our view of this bill.

So I urge you to approve this amended bill as is and to then urge the Assembly to concur with this version of AB 850.

Thank you for your time. I would be happy to try to answer any questions.

Jim Brakken, President
Bayfield County Lakes Forum
15255 East Cable Lake Road, Cable, WI 54821
715-798-3163 Jim.Brakken@Yahoo.com

To: Wisconsin Senate Committee on Environment and Natural Resources 2-7-07

Re: SB 169

To ensure that the quality of our lakes and streams is not degraded, the fishery and other wildlife not impacted negatively and waterfront property values not reduced, the Bayfield County Lakes Forum and the Northwest Wisconsin Water Resource Consortium oppose SB 169 as written because we feel it will result in unreasonable and irresponsible pier construction.

Although one developer constructing what we feel is an excessive number of piers or piers of an unreasonable size may not, at first, appear to have immediate, significant, negative impact on our public waters, studies show that the *cumulative* impact of many deviant developments results in the degradation of our waters and declining property values for all waterfront property owners.

Excessive placement of boats and piers in the near shore areas of lakes threatens the plants and animals that live in this important area. Riparian owners should be able to place piers that do not threaten shoreland habitat. It makes sense for the state to establish standards for "how much is too much". Under current law, two boats in the first 50 feet and an additional boat in each additional 50 feet of frontage is permitted.

But Section 4 of this bill allows certain property owners to place piers with more boat slips than other property owners. (Page 5, lines 9-14) That section allows owners of a "property" that has "3 or more dwellings" or any "commercial structures" to place more than twice as many piers as other property owners. This is unfair. And it could damage sensitive lake shore ecosystems.

These provisions are written broadly and without adequate definitions to limit this double boat slip density. The bill doesn't say what a "property" is. But lawyers can manipulate tax parcels and lots so that this provision could be used to link small waterfront parcels with larger parcels in "keyhole" type developments to qualify for double density boat slips. Because boat slips are very valuable, this bill will encourage lots of creative actions to qualify property for this special treatment.

The bill doesn't define the kinds of "commercial structures" that qualify a property for double boat slip density. The bill's language doesn't require that the property be zoned commercial or multi-family residential it just requires commercial structures. Does this mean someone who operates a home office business or who sells garden produce can qualify for twice as many boat slips?

Boat slips have been found to add $50,000 or more to the value of waterfront property. If SB 169 is passed wouldn't you expect people to find a way to qualify for double boat slip density?

The bill also allows properties with multifamily and commercial structures to have "an additional number" of transient boat slips. (page 5, lines 12-14). There is **no limit** on this number. But DNR is prohibited from denying a permit for commercial or multifamily properties under this section based under this section based on the number of slips. (page 6, line2-4) This has to be fixed. The bill also reduces DNR's ability to regulate piers because the bill shifts the burden of demonstrating pier problems to the department. Historically, riparian owners had to show that any structure they propose to place in public waters would not be detrimental to public navigation, habitat and other values. We oppose the provisions of the bill that require DNR to prove that a pier will do damage, rather than requiring the property owner to prove that it will not.

Although the large southern lakes can accommodate large loading or party platforms at the end of the dock, our many small northern lakes cannot. The size of the party platform should be reduced to no more than 100 square feet.

This proposal does some useful things by reasonably "grandfathering" some existing piers through a sensible process. But it goes the wrong way when it grants special privileges to certain categories of waterfront property and impairs DNR's practical ability to regulate piers that threaten lake habitat.

The Bayfield County Lakes Forum and the Northwest Wisconsin Water Resource Consortium havw the utmost regard for the property rights of the individual. But the term 'property rights' must also include the rights of all other waterfront owner property owners to *not* have the values of their properties reduced due to another individual's intent to construct piers in excessive size or numbers.

Furthermore, because our waters are equally owned by all citizens of Wisconsin, it is also the right of the public, to *not* see the quality, health, value and appearance of our surface waters diminished in any way. In this case, the term 'the public' extends to include all of those future generations who have an equal right to enjoy our waters as do we. It also includes the many visitors to our county who support our tourism-based economy, essential to the economic well being of northern Wisconsin.

For these reasons, the Bayfield County Lakes Forum and the Northwest Wisconsin Water Resource Consortium are opposed to SB 169.

Respectively submitted,

Jim Brakken

Jim Brakken

Bayfield County Lakes Forum President

Northwest Wisconsin Water Resource Consortium Executive Officer

Delegate to the Wisconsin Conservation Congress

Thank you for the opportunity to share my feelings about SB 169 with you.

My name is Jim Brakken. I live in the Town of Cable in Bayfield County, within an hour's drive of over 2,000 lakes and many miles of streams.

I am a retired public school teacher who now spends most of his time as a volunteer working to protect and preserve our lakes.

I am the founder and past president of the Cable Lake Association and the AIS Coordinator for the Town of Cable.

I am also the President of the Bayfield County Lakes Forum, a citizen's group representing over 20 lake associations in Bayfield County.

I speak also today for the Northwest Wisconsin Water Resource Consortium representing the countywide lake associations from 16 counties in the northwest.

Although I am a Delegate to the Wisconsin Conservation Congress, I am not speaking for the Congress on this issue. I believe the Wisconsin Conservation Congress will deliver its own statement on SB 385.

Finally, although I am a Past President and Director Emeritus of the Wisconsin Association of Lakes, I do not speak on behalf of WAL on this issue.